**Unit Three**

**I n f l u e n c e s o n L a w m a k i n g**

definitions

*law:* a collection of formal regulations, made and enforced by a sovereign authority that governs society by controlling the behaviour of its members

*constitutions:* a superior or fundamental form of law

*legislation:* statutes made by a democratically elected legislature

*judicial decisions:* precedents made by judges in courts on particular cases

*regulations and ordinances:* made by the executive under authority delegated by parliament via legislation

*political parties:* associations of individuals with broadly similar ideological views that have a broad focus

*major parties:* any party with enough electoral support to form government

*coalition:* a partnership formed between a major party and a minor party with similar ideologies

*minor party:* party with enough support to regularly win some seats but not enough to form government

*micro party:* party that may win a seat, almost always in the senate

*ideology:* a set of coherent beliefs about how society should be organised

*substantial political party influence:* significant power over legislation by being able to generate many bills and pass acts

*strong political party influence:* significant power over legislation by being able to force amendments or block passage

*moderate political party influence:* some power to suggest amendments or combine with other parties to enhance power

*limited political party influence:* little to no power to influence legislation

parliament as a law-making institution

* democratic
* sovereign and therefore superior
* flexible, responsive, and proactive

courts as a law-making institution

* authoritative
* apolitical and independent
* inferior due to lack of democratic legitimacy
* incremental and reactive

individuals and their influence on lawmaking

* many individuals will only participate in lawmaking at election time
* some individuals are highly motivated, very active, powerful, or members of parliament

*limits to individuals’ influence*

* lack resources (money and time)
* lack access to key decision makers such as government ministers
* lack organisational support (they are on their own)

*strengths to individuals’ influence*

* have resources and/or backing from a pressure group
* they are an independent or in a position of power
* persistence and/or skill
* they have a public profile

ronald williams

* successfully challenged the constitutionality of the commonwealth’s national schools chaplaincy program
* used courts to force parliament to make new laws and amend existing ones

*williams v commonwealth of australia [2012] hca 23 “williams no 1”*

* high court found that section 61 did not permit the government to fund the program without legislation
* declared that programs could not be funded if parliament has power to legislate but has not done so
* government continued to legislate under section 51(xxiiia) ‘social services power’ after amending the financial management and accountability act 1997 (cth)

*williams v commonwealth of australia [2014] hca 23 “williams no 2”*

* high court that section 51(xxiiia) required benefits to be paid directly to the beneficiary
* payments were being made to the scripture union of queensland and therefore unlawful
* government now must fund the program under section 96 tied grants and the states may reject or interpret these grants in ways the commonwealth did not intend

*ronald williams’ success*

* highly motivated
* funded by private donations from like-minded parents and other supporters of secular non-religious education in state schools

david manne

* human rights lawyer and migration agent

*plaintiff m70/2011 v minister for immigration and citizenship*

* high court found that malaysia was not legally bound to protect asylum seekers under the migration act 1958
* malaysia solution was declared invalid
* the court also decided that an unaccompanied asylum seeker who is under 18 years of age may not lawfully be taken from australia without the minister's written consent

*david manne’s success*

* has legal training, skills, and moral motivation to represent plaintiffs in migration cases
* supported by refugee advocates and the refugee and immigration legal centre who provide him with resources

antony green

* well known and respected psephologist (studies elections and electoral systems)

*senate electoral reforms*

* joint standing committee on electoral matters invited submissions concerning suggestions for senate electoral reforms in 2014 following the 2013 election
* antony green suggested abolishing group ticket voting, allowing voters to number party preferences above the line and introducing optional preferential voting below the line
* parliament passed the commonwealth electoral amendment act 2016

*antony green’s success*

* universally respected with a public profile
* his submission attracted public attention

independent members of parliament

* influence is strong in a hung parliament where their vote is necessary for a minority government to retain office
* may participate in parliamentary committees and debate during lawmaking

*rob oakeshott and tony windsor*

* represented regional electorates and prioritised fast broadband and water management
* gillard government committed $1.7 billion to the murray darling basin plan in order to gain the support of these independents

*andrew wilkie*

* wanted to reform gambling laws but lost gillard’s support when the labor speaker returned to the backbench, providing an extra labor vote

*independents’ success*

* when their support is necessary for the government to retain office
* may increase over time as popularity of major parties decreases

political parties and their influence on lawmaking

* political parties are associations of individuals with broadly similar ideological views that have a broad focus
* they influence lawmaking by winning seats (forming government, forming coalitions, holding the senate balance of power, or engaging in preference deals)
* once elected, parties may introduce bills, debate bills, seek amendments, participate in senate committees, and vote on bills

*government parties*

* usually have complete dominance over the lower house, effectively guaranteeing the passage of all government bills through the lower house
* have a democratic will of the majority mandate
* majority of bills originate from the cabinet (86% in 2016)

*junior party of a governing coalition*

* participates in cabinet discussions and therefore influences policy

⤷ nationals combined with liberals to prevent debate of marriage equality laws (2015)

*opposition*

* can block or amend government bills in the senate with some support required

*minor party supporting a minority government*

* huge leverage over the governing party as government relies on their support

⤷ greens forced gillard government to introduce a carbon tax, which she explicitly said she would not do in her pre-campaign promises (2011)

*minor party holding the senate balance of power*

* can determine whether a bill is passed or blocked
* gives some power to negotiate amendments

⤷ greens consistently influence legislation such as the electoral amendment act (2016)

*minor and micro parties with preference deals*

* may negotiate with other parties, especially major parties, in order to influence them
* major parties may be persuaded to modify their policies in return for second preference on the ‘how to vote’ cards of minor and micro parties

*through the judiciary*

* a party may challenge a law or government policy

⤷ bob day challenged the constitutionality of electoral amendment act 2016 and failed

⤷ communist party challenged a law forcing its dissolution and won (1951)

pressure groups and their influence on lawmaking

* pressure groups are associations of individuals with similar views and a narrow focus

*sectional pressure groups*

* represent the self-interest of sections of the community (parts of society)
* sectors typically represented are business, particular industries, labour, and professions

⤷ business council of australia

⤷ australian council of trade unions

*cause groups*

* motivated by a principle, aim, or movement perceived to be beneficial to all of society
* promote their cause and expend their efforts and resources for the good of society

⤷ recognise (constitutional recognition of aboriginal people)  
⤷ australian marriage equality (advocates for marriage rights for same sex couples)

*hybrid groups*

* advocate for the interests of a section of society but also for related policies which they believe to be in the wider interests of society

⤷ returned services league (better treatment of returned soldiers, sailors, and air force)

⤷ australian medical association (on behalf of the medical profession as well as health interests of all australians)

*peak bodies*

* national associations composed of smaller pressure groups
* more resources, larger size, can represent interests at a commonwealth level

*insider groups*

* groups that represent important sectors of society or the economy and are regarded as legitimate by the government
* governments often respect and seek out their advice
* well resourced and exclusive

*outsider groups*

* represent causes, principles, or aims that are less central to core government business
* government often does not pay attention unless circumstances make them prominent
* poorly resourced and less professional but highly motivated and inclusive

pressure group strategies

*direct lobbying*

* directly meeting or communicating with lawmakers
* often former politicians and ministers with access and insider knowledge

⤷ clubs australia lobbied the gillard government to prevent the introduction of tough anti-gambling laws

*submissions to parliament*

* statements or arguments from someone seeking to influence the lawmaking process
* parliamentary committees investigate submissions and may make recommendations to parliament

⤷ refugee and immigration legal centre made a submission to the parliamentary joint committee on human rights regarding the migration act 1958

*direct action*

* taking action such as street marches, picketing, and sit-ins
* inexpensive and may encourage media coverage, increasing publicity

⤷ #lovemakesaway protestors occupied the offices of foreign minister julie bishop

*court action*

* legal action to contest the interpretation of statues, challenge executive decisions, or to create new precedents
* expensive so usually it is insider/sectional groups that can afford to go to court

⤷ mackay conservation group halted the development of adani mine by challenging the environment minister’s decision to approve it in the federal court

*advertising*

* using media to communicate with the public
* expensive so usually used by insider/sectional groups

⤷ minerals council of australia ran a campaign against the resources super profits tax, planned for introduction in 2012

*online campaigns*

* can reach large numbers of people at little cost, raise funds, and create online petitions
* provides an avenue for smaller and less resourced groups

⤷ get-up! is an online-only petitioning group with a membership of over one million followers. they successfully challenged the commonwealth electoral act, allowing a later closer date on the electoral rolls so more people could vote (2010)

*celebrities*

* the use of a prominent person to endorse pressure group objectives

⤷ cate blanchett has given her name and support to the australian conservation foundation and was an active voice against the scrapping of the carbon tax

quizlet

<https://quizlet.com/_7hbipn>

example essay structure

introduction - introduce all influences on law making, define law, strong thesis with argument

paragraph 1 - influence of political parties and evaluate

paragraph 2 - influence of individuals and evaluate

paragraph 3 - influence of pressure groups and evaluate

conclusion - restate points and examples, strong finish with evaluation

practice essay questions

“pressure groups and political parties are always more successful influencing lawmaking through parliament than the courts.” assess. {25 marks}

evaluate the impact of individuals or pressure groups, compared to political parties, on the lawmaking process. {25 marks}